

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Scott Kiley,

Complainant,

vs.

Pacific Bell Telephone Company
And In Touch Communications,

Defendants.

(ECP)
Case 01-08-006
(Filed August 6, 2001)**OPINION CLOSING PROCEEDING****Background**

Complainant, Scott Kiley, requested that the Commission order Pacific Bell Telephone Company (Pacific) and In Touch Communications (In Touch) to: (1) initiate service to complainant, (2) never disconnect complainant from service for any reason, (3) pay monetary damages in excess of \$500,000, as well as “compensation” for constitutional violations, (4) install new phone lines and equipment in complainant’s home, and (5) rescind all charges and interest. The complainant also asked the Commission to bring civil and criminal charges against the defendants.

In a ruling dated October 18, 2001, the assigned Administrative Law Judge (ALJ) ruled that, other than to initiate service and to provide adequate equipment, the Commission lacked the authority to order the requested relief.

The ruling stated that it is well-settled law that the Commission lacks jurisdiction to make an award of damages, such as that requested by complainant. (Marking Products, Inc. v. AT&T, D.01-01-044, at note 8 (2001).)

The ruling also noted that Pub. Util. Code § 453 prohibits the Commission from ordering defendants to provide service on terms and conditions different from those set out in approved tariffs. Public utilities may not discriminate among customers. Complainant's request that the Commission prohibits Pacific and In Touch from disconnecting their service "for any reason" and requires them to rescind all charges and interest violates this section. Both Pacific and In Touch have tariffs that set out the grounds upon which the utility may disconnect service for any customer, as well as the charges for services. The ruling concluded that those tariffs apply to all customers, including complainant, and that the Commission cannot grant complainant an exemption from those tariffs.

The ruling also found that the Commission had no jurisdiction to enforce state or federal penal codes, and could not initiate a civil court action against Pacific or In Touch on behalf of complainant.

Overall, the ruling determined that the only relief requested by complainant that the Commission may grant, upon a proper showing, is an order that Pacific and In Touch (1) respond to complainant's request to initiate service, and (2) if service is provided, to use adequate equipment.

The ruling went on to consider whether the remaining issues might be resolved through the Commission's Expedited Complaint Process (ECP). Rule 13.2 of the Commission's Rules of Practice and Procedure provides an expedited process for certain consumer complaints against public utilities. This process is only available where the amount of money claimed does not exceed

the jurisdictional amount for small claims court. The currently applicable limit is \$5,000 per Code of Civil Procedure § 116.220(a)(1).

The ruling concluded that the issues remaining in the proceeding could be resolved pursuant to the ECP, and would allow for a more efficient resolution.

Subsequently, the proceeding was to be re-docketed and processed pursuant to the ECP. The hearing required by Rule 13(d) was held on October 30, 2001.

Defendant In Touch

As of this date, In Touch has not properly filed and served its answer to this complaint as required by Rule 13 of the Commission's Rules of Practice and Procedure. Prompt response to customer complaints is a condition of In Touch's Certificate of Public Convenience and Necessity issued in Decision 98-04-042. Failure to file an answer is a ground for revocation of the Certificate. The assigned ALJ also ordered In Touch to file and serve its answer to the complaint no later than October 29, 2001. In Touch failed to properly file and serve its answer.

In Touch did, however, send a letter to the Commission's general address, which was received by the Telecommunications Division on October 25, 2001. The letter did not comply with the Commission Rules pertaining to answers.

In the letter, In Touch admitted that Kiley had paid \$43.00. Although In Touch stated that it had provided reasonable service, In Touch did not appear at the hearing to contest Kiley's allegations of inadequate service. Kiley sought reparations in the amount of \$43.00 from In Touch.

The record shows un rebutted allegations of inadequate service by In Touch. Therefore, In Touch is ordered to pay to Kiley \$43.00 as reparations no later than 30 days after the effective date of this order.

We also order, in light of the failure of defendant In Touch to respond to the complaint or otherwise to participate in this proceeding, that In Touch make itself familiar with the commission's requirements for telecommunications service providers and comply with all applicable laws and regulations.

Outcome of October 30, 2001, Hearing

At the hearing, complainant and representatives of Pacific appeared. In Touch did not. Complainant explained that, based on representations of his desired local and long distance carrier, he believed that Pacific was preventing him from receiving such service. Upon reviewing complainant's service history, and with additional information supplied by complainant at the hearing, Pacific hypothesized that the carrier had incorrectly assigned him a number with a prefix that could not be served from his rate center. This could explain Pacific's inability to connect the service.

Complainant agreed to contact his desired carrier with this information and to attempt to get a different number assigned. Should this prove unsuccessful, he will work with the Commission's Consumer Affairs Branch to resolve the matter with the carrier.

O R D E R

IT IS ORDERED that:

1. In Touch comply with the terms of this order.
2. The issues raised by Complainant having been addressed, this proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.